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OFFICE OF PETITIONS

In re Application of :
Terry Howley : DECISION ON PETITION
Application No. 10/615,762 :
Filed: July 9, 2003 :
Title: FISHING ROD REST :

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT:NON-FEE ISSUE filed July 17, 2007. This decision has been made in light of the letters filed January 29, 2007, and February 1, 2007.

The petition under § 1.181 is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are not permitted. See 1.181(f).

Alternatively, applicant may seek revival under the provisions of 37 CFR 1.137. Such a request should include a cover letter entitled "Petition under 37 C.F.R. § 1.137(a)" or "Petition under 37 C.F.R. § 1.137(b)," as appropriate.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed June 1, 2006¹. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under

¹ The Office action was originally mailed on March 21, 2006. The Office action was returned to the Office by the withdrawn attorney. The Office action was then mailed to the sole inventor with a new period for response set.

§ 1.136(a). No reply timely filed and no extension of time obtained, the application became abandoned effective September 2, 2006². A courtesy Notice of Abandonment was mailed on December 29, 2006.

MPEP 711.03 provides that:

When advised of the abandonment of his or her application, applicant may either ask for reconsideration of such holding, if he or she disagrees with it on the basis that there is no abandonment in fact; or petition for revival under 37 CFR 1.137. When an amendment reaches the U.S. Patent and Trademark Office after the expiration of the period for reply and there is no dispute as to the dates involved, no question of reconsideration of a holding of abandonment can be presented.

Further,

A petition to revive an abandoned application (discussed below) should not be confused with a petition from an examiner's holding of abandonment. Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

In this instance, petitioner disputes the abandonment of the application but there is no dispute that no response was filed. Applicant does not allege that a response was timely filed. Moreover, a review of the application record confirms that no response to the Office action was timely received. As such, the application is in fact abandonment. Accordingly, a petition under 37 CFR 1.137 (accompanied by the appropriate fee) is

² A letter dated May 25, 2006 was filed on August 24, 2006 but it was not responsive to the Office action mailed June 1, 2006.

necessary to revive this abandoned application (and continue prosecution).

The provisions of 37 CFR 1.137 provide for Revival of abandoned application, terminated re-examination proceeding, or lapsed patent, as follows:

(a) Unavoidable. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a re-examination proceeding terminated under §§ 1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(1);
- (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

(b) Unintentional. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a re-examination proceeding terminated under §§ 1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Receipt of the replies to the Office action filed August 13 and 17, 2007 is acknowledged. However, the examiner may not consider these replies until the application is revived.

The petition fee for revival based on unavoidable delay is \$255 for a small entity and based on unintentional delay is \$770 for a small entity. Petitions under 37 CFR 1.137(b) are less burdensome (statement(s) rather than a showing accompanied by documentary evidence) to file and are evaluated under the less stringent "unintentional delay" standard.

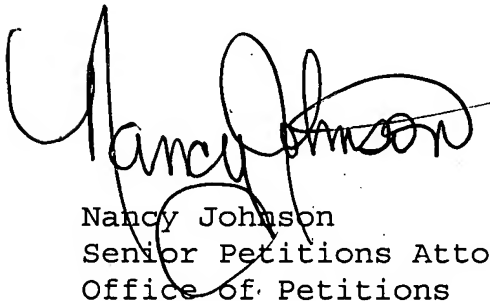
Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.



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